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SUPREME COURT, U.S.

NO. 80-5751

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

TIMOTHY GEORGE BALDWIN, Petitioner

VS.

STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT, STATE OF LOUISIANA

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The Petition of TIMOTHY GEORGE BALDWIN, respectfully requests that a Writ of Certiorari issue to review the judgment of and opinion of the Louisiana Supreme Court entered in these proceedings on May 19, 1980, to which rehearing was denied on October 6, 1980. Petitioner's death warrant was signed October 9, 1980, fixing Petitioner's date of execution for January 8, 1981.

QUESTIONS PRESENTED FOR REVIEW

Louisiana's capital sentencing structure is set forth in LSA-R.S. 14:30 et seq. (La.Rev.Ann. 1976), under which said structure Petitioner has been sentenced to death. The imposition of said penalty raises important and substantial constitutional questions, to-wit:

1. DOES THE DEATH PENALTY AT THE PRESENT TIME CONSTITUTE CRUEL AND UNUSUAL AND EXCESSIVE PUNISHMENT PER SE IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION IN THAT IT MAKES NO MEASURABLE CONTRIBUTION TO ACCEPTABLE GOALS OF PUNISHMENT AND THUS IS NOTHING MORE THAN THE PURPOSELESS AND NEEDLESS IMPOSITION OF PAIN AND SUFFERING?

This Court has dealt with the issue of the constitutionality of the death penalty in three major decisions spanning the previous decade, namely Furman v. Georgia, Gregg v. Georgia and Coker v. Georgia, all of said decisions generally affirming the proposition that the concept of stare decisis does not prevent this Court from reconsidering the constitutionality of the death penalty should the evolving standards of human decency so dictate, and should it be determined that capital punishment makes no measurable contribution to acceptable goals of punishment.

Petitioner submits, as will hereinafter be detailed, that based on the results of several important studies conducted since the 1977 Coker decision, data contained in the Florida Department of Law Enforcement 1979 Annual Report "Uniform Crime Reports - State of Florida" and because of the movement toward international recognition of human rights which commenced in earnest in 1976, the death penalty should in the decade of the 1980's be ruled unconstitutional per se.

The issue of the unconstitutionality of the death penalty was raised by Petitioner (1) at the time of his sentence at the trial court level in the form of an objection as to the cruel, unusual and excessive nature thereof, (2) in Petitioner's Assignment of Error No. 40 in his original appellate brief to the Louisiana Supreme Court and (3) in his Preliminary Brief in Support of Petition for Rehearing and his Supplemental Brief in Support of Petition for Rehearing in the Louisiana Supreme Court.

2. DOES LOUISIANA'S STATUTE MANDATING REVIEW OF EVERY DEATH SENTENCE ON A JUDICIAL DISTRICT-WIDE BASIS RATHER THAN ON A STATE-WIDE BASIS TO DETERMINE EXCESSIVENESS CONSTITUTE A CONSTITUTIONALLY IMPERMISSIBLE SCOPE OF APPELLATE REVIEW AND THUS VIOLATE THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT AND THE CRUEL AND UNUSUAL PUNISHMENT CLAUSE OF THE EIGHTH AMENDMENT?

Unlike other capital sentencing structures established throughout the United States, several of which have been approved by this Court, Louisiana's Supreme Court rule precludes review of the proportionality and excessiveness of each death sentence in comparison with sentences in other death penalty cases from throughout the State. The statute mandating review of death penalty cases as regards the possible excessiveness thereof is La.C.C.P.Art. 905.9 as refined by La.Sup.Ct. Rule 28. The procedures established by said statute and rule are unconstitutional in that they merely require that the District Attorney in each death case reviewed file a synopsis of each murder case in his judicial district in which sentence was imposed after January 1, 1976.

This question was specifically raised in the case at bar during the rehearing process in the Louisiana Supreme Court which had previously split 4-3 in Prejean v. Louisiana on the instant question. Petitioner shows that to the extent that Prejean v. Louisiana, No. 79-6826 on the Docket of this Honorable Court (____U.S.____), in which said case a writ of certiorari was denied by this Court, is in conflict with Petitioner's claims hereunder, the claims therein presented should be considered herein.

This issue was raised in Petitioner's Petition for Rehearing in the Louisiana Supreme Court.

3. DID THE TRIAL COURT ERR IN DENYING PETITIONER'S CHALLENGE FOR CAUSE OF PROSPECTIVE JUROR, VERA GLASS, IN VIOLATION OF PETITIONER'S RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION?

The Louisiana statutory law governing the requirement of fair and impartial jurors in criminal trials is codified in La.C.Cr.P. Art. 797 which is a logical extension of the due process and impartial trial dictates as found in LSA-Const. Arts. 1, §2 and §16, respectively. Petitioner, in accordance with the dictates of La.C.Cr.P. Art. 800 exhausted his twelve alloted peremptory challenges prior to the completion of the petit jury panel and is therefore able to complain of the Court's refusal to sustain his challenge for cause of prospective juror, Vera Glass.

Petitioner contends that the answers by said prospective juror during voir dire questioning indicated her inability and unwillingness to give Petitioner a fair and impartial trial in accordance with law.

This issue was raised by Petitioner in the form of a timely challenge for cause of the prospective juror during the trial court proceedings and preserved by objection. It was again raised in Petitioner's Motion for New Trial filed August 2, 1978 and as Assignment of Error No. 10 in the post trial appellate process.

4. SHOULD EVIDENCE OBTAINED FROM PETITIONER AND/OR FROM PREMISES OR OBJECTS UNDER HIS AUTHORITY AND CONTROL HAVE BEEN SUPPRESSED DUE TO UNCONSTITUTIONAL SEARCHES AND SEIZURES IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION?

On the basis of information contained in a police radio bulletin and/or teletype information containing an inadequate and imprecise description of the van Petitioner was operating, Arkansas law enforcement offiers apprehended Petitioner and initially two innocent by-standers as they were exiting an ElDorado, Arkansas restaurant. The seizure of Petitioner's vehicle thereafter followed. Soon thereafter law enforcement officers searched Petitioner's motel room following the prior

confiscation of his keys and following his execution of a consent to search form, and later after Petitioner's execution of a second consent form, searched his van after same had been driven back to Louisiana by a representative of the West Monroe Police Department.

The question specifically raised is whether the physical evidence obtained from Defendant, his motel room and his vehicle should have been suppressed because (1) the Defendant's arrest was not based upon probable cause, where the information utilized by the arresting officers was an inadequate and imprecise description of the vehicle and apparently no description of the person, and (2) the alleged consent by Defendant to search his motel room and vehicle was the result and product of the original illegal arrest and not of Defendant's free will, considering that the governmental officers did not adequately inform him that he need not comply with their request to conduct the initial search, the close temporal proximity of the consent to the prior illegalities, the fact that there were no intervening circumstances, and the purposes and flagrancy of the official misconduct.

This issue was raised in the form of a Motion to Suppress Evidence filed in the trial court proceedings on July 10, 1978, and preserved in Petitioner's Assignment of Error No. 5 (see also Assignments of Error. Nos. 19, 20, 21, 22, 23, 24, 25,27 and 28) filed in connection with Petitioner's appeal to the Louisiana Supreme Court.

OPINION BELOW

The opinion of the Louisiana Supreme Court is cited as State of Louisiana v. Timothy George Baldwin, 388 So.2d 664, and appears in the Appendix hereto.

JURISDICTION

The Judgment of the Louisiana Supreme Court was entered on May 19, 1980, and request for rehearing was denied on October 6, 1980. Petitioner's death warrant was signed on October 9, 1980, fixing Petitioner's date of execution for January 8, 1981. In response to an application for extension of time within which to file this Petition, Mr. Justice Powell granted the requested extension until January 4, 1981. This Court's jurisdiction is invoked under any applicable provisions as may be contained in 28 U.S.C. 1257(3) and 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

1. This case involves the Fourth, Sixth, Eighth and Fourteenth Amendments of/to the Constitution of the United States of America.

2. This case involves the following provisions of the Louisiana Constitution of 1974: LSA-Const. Art. 1, §2, §16 and §20.

3. This case involves the following provisions of the Louisiana Code of Criminal Procedure and of the Louisiana Supreme Court Rules: C.Cr.P. Art. 905.9 (as enacted in 1976), C.Cr.P.Art. 797, C.Cr.P.Art. 800 and Supreme Court Rule 28 Article 905.9.1 (added November 22, 1977, effective January 1, 1978).

4. This case involves LSA-R.S. 14:30 et. seq. (La.Rev.Stat.Ann. 1976).

All relevant Louisiana statutes set forth in "APPENDIX E" hereto.

STATEMENT OF THE CASE

On the morning of April 5, 1978 Mary James Peters also known as Mary James, was found in a semi-conscious condition on the floor of her kitchen in her home in West Monroe, Louisiana, having been beaten with various objects including a stool, skillet and possibly a telephone. She died the day following her injuries in a West Monroe hospital.

Petitioner and his companion, Marilyn Hampton, had visited in the home of the deceased from the mid to late evening hours of the previous night (the evening she was attacked), and in fact, Petitioner's finger and palm prints were found on various items, including a coffee cup, in the Peters' home.

Petitioner, who claimed he had departed the residence of the deceased prior to the attack and had no knowledge of same, was subsequently arrested in ElDorado, Arkansas whereat he signed a consent form for the search of his motel room in said city. Subsequently, after he, Ms. Hampton and the van he had been operating were returned to Louisiana by officials of the West Monroe Police Department, Petitioner signed a consent to search the van wherein was found two bank bags, one containing savings bonds and certificates owned by the deceased.

Another travelling companion of Petitioner, namely William O'Dell Jones, who had been left at a roadside park in Mississippi while Petitioner and Ms. Hampton journeyed to West Monroe, Louisiana, subsequently led officers to a safe belonging to the victim which was located in a canal in Ouachita Parish, Louisiana. Jones testified that he observed Petitioner throw said safe into the canal and further that Petitioner made oral inculpatory statements and admissions in his presence indicating that Petitioner desired to rob the deceased and did in fact rob and kill her.

Petitioner was brought to trial in July, 1978 following grand jury indictment for first degree murder, and following a six-day bifurcated trial was found guilty as charged and sentenced to death, the jury finding that the deceased's death occurred during the perpetration of an armed robbery and was committed in an especially cruel and heinous manner.

Petitioner's direct appeal to the Louisiana Supreme Court was denied on May 19, 1980, and thereafter Petitioner applied for rehearing to said Court which, after several extensions of time to enable Petitioner to assemble additional death penalty data, said request for

rehearing was denied on October 6, 1980. Thereafter following the signing of Petitioner's death warrant by the Trial Judge setting Petitioner's execution date for January 8, 1981, Mr. Justice Powell of this Court granted an extension of time for the filing of this writ of certiorari until January 4, 1981.

REASONS FOR GRANTING THE WRIT

I.

CAPITAL PUNISHMENT CONSTITUTES CRUEL, UNUSUAL AND EXCESSIVE PUNISHMENT IN LIGHT OF SEVERAL POST 1977 DEVELOPMENTS AND SHOULD THUS BE HELD UNCONSTITUTIONAL PER SE AS BEING IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

The most recent major pronouncements regarding the constitutionality of the death penalty are contained in Gregg v. Georgia, 428 U.S. 153 (1976) and Coker v. Georgia, 433 U.S. 584 (1977) wherein it was generally concluded that as long as a certain punishment, statutorily enacted, does not result in the wanton and unnecessary infliction of pain, is not grossly out of proportion to the severity of the crime charged and does not run afoul of the dignity of man concept, then legislative bodies were not required to select the least severe penalty possible. In Coker the Court offered the further requirement that a particular sanction must make a measurable contribution to acceptable goals of punishment for it to avoid contravening the dictates of the cruel and unusual punishment clause.

In Furman v. Georgia, 408 U.S. 238 (1972) and in Gregg v. Georgia, the members of this Court examined volumes of historical data and scientific studies, and ultimately concluded in 1976 as regards the universally debated deterrency issue:

> "Although some of the studies suggest that the death penalty may not function as a significantly greater deterrent than lesser penalties, there is no convincing empirical evidence either supporting or refuting this view." Gregg v. Georgia, 428 U.S. at 185.

In addition, Justices Stewart, Powell and Stevens writing for the plurality in Gregg observed at page 187 thereof:

> ". . . in the absence of more convincing evidence . . . the infliction of death as a punishment for murder is not without justification and thus is not unconstitutionally severe." Gregg v. Georgia, 428 U.S. at 187.

Petitioner submits that a plethora of new studies, law review articles and statistical data have been released since 1976-1977 which serve to supply convincing evidence that the death penalty does not deter murders, and accordingly, makes no measurable contribution to acceptable goals of punishment.

Until 1975, there were few positive statistical studies available to aid in the determination as to whether capital punishment served as a deterrent to homicides. In 1975, however, Issac Ehrlich published his report, The Deterrent Of Capital Punishment: A Question of Life And Death which concluded in part that execution has a deterrent effect. This conclusion, which differed with many studies of the past, sparked considerable debate of which this Court is aware. The Ehrlich report was thereafter criticized by Baldus and Cole (A Comparison of the Work of Thorsten, Sellin and Ehrlich on the Deterrent Effect of Capital Punishment: An Assessment of the Estimates); Bowers and Pierce (The Illusion of Deterrence on Issac Ehrlich's Research and Capital Punishment); Passell and Taylor (The Deterrent Effect of Capital Punishment: Another View); and Passell (The Deterrent Effect of the Death Penalty).

In addition, the Forst report completed in 1977, two years after the Ehrlich study and one year after this Court discerned the need for more convincing evidence as to the lack of social utility of capital punishment, concluded that while the risk of apprehension and conviction is of positive deterrent effect, no deterrent effect can (could) be deduced for executions. Forst, The Deterrent Effect of Capital Punishment: A Cross State Analysis of the 1960's at 749-763.

The Forst report concluded:

> ". . . the finding that capital punishment . . . does not deter homicide is remarkably robust with respect to a wide range of alternative constructions of the execution rate, alternate assumptions about simultaneity among the crime and sanction variables . . . and the inclusion of different subsets of available control variables.
>
> "The results of this analysis suggest . . . that it is erroneous to view capital punishment as a means of reducing the homicide rate." Forst at 764.

Yet another report, one headed by Hans Zeisel, professor emeritus of law and sociology at the University of Chicago and senior consultant for the American Bar Foundation, concluded in 1977:

> "If there is one (deterrent effect of the death penalty) it can only be minute, since not one of the many research approaches - from the simplest to the most sophisticated - was able to find it. The proper question, therefore, is whether an effect that is at best so small that nobody has been able to detect it, justifies the awesome moral costs of the death penalty." Zeisel, "The Deterrent Effect of the Death Penalty: Facts and Faith" at 338.

In 1979, three years after Gregg, Stephen J. Knorr completed a lengthy report for the Journal of Criminal Law and Criminology as copyrighted by the Northwestern University School of Law. The study, by far the most complex and sophisticated of all time, implemented a system of analysis termed by the author as pooled cross-sectional time series analysis. Petitioner will detail the various approaches and intricacies of the Knorr Report in his subsequent brief; however, it is important to note for present purposes that this study which avoided the highly criticized methodological problems inherent in earlier studies, followed the basic but improved Ehrlich model but concluded, oppositely, that it is impossible to equate deterrency with capital punishment.

The Knorr report which is attached as "APPENDIX G" to Petitioner's original Petition for Writ of Certiorari concludes:

> "The hypotheses tested in this study are intentionally designed and specified in such a way that if capital punishment is a deterrent, this data should prove it. In none of the equations, however, could the death penalty be regarded as an effective deterrent. Only the probability of apprehension could be found significant and even then only on the State level." Knorr at 253.

While Knorr was careful to distinguish the difference between proof that capital punishment has no deterrent effect and evidence unable to prove the deterrency hypothesis and indicated it may be humanly impossible, one way or the other, to absolutely prove the deterrency question by statistical studies, he indicates that the results of recent studies reveal that the burden of proof as to the issue of deterrency should now be shifted to the retentionists, a concept earlier rejected by the dissenting Justices in Furman and Gregg based on the evidence before them at that time.

Furthermore, a 1980 study completed by William J. Bowers and Glenn L. Pierce of the Center for Applied Social Research, Northeastern University, Boston, Massachusetts (a copy of said report is attached as "APPENDIX H" to Petitioner's original Petition for Writ of Certiorari) concludes that capital punishment may well have a brutalizing rather than a deterrent effect and thus may lead to a sacrifice of innocent lives. Bowers and Pierce, What Is The Effect Of Executions: Deterrence Or Brutalization.

According to the Zeisel article, there remains one important means by which the deterrency argument can be tested and evaluated. Now that State legislatures have reworked their capital punishment statutes following Furman, there is opportunity to ascertain whether murder rates will decline in states that implement and carry out capital punishment. Zeisel at 343.

If the death penalty does not deter homicides, the Florida murder rate for 1979 should be the ultimate test, for it is the State of Florida which in 1979 carried out the only involuntary execution in

the United States in thirteen (13) years. If in fact the murder rate in Florida increased in 1979 even after the sensational Theodore Bundy murder trial and the international publicity generated by the execution of John Spenkelink, then Petitioner submits that capital punishment is not a deterrent to murder, but rather may well serve to brutalize society as indicated in the Bowers and Pierce report, and accordingly constitutes cruel and unusual punishment by serving no worthwhile purpose.

The 1979 Florida Uniform Crime Reports publication, Crime In Florida, which is attached to the original Petition herein as "APPENDIX I" thereto indicates that there were 857 murders in Florida in 1977, 949 in 1978 and 1,084 in 1979.

The percentage change in 1977 over the 1976 level was minus (-) 5.0 percent, while said change in 1978 over the 1977 figure was +10.7 percent. In 1979, the Florida murder rate increased 14.2 percent over 1978 compared with the general crime rate increase of 12.1 percent in 1979 over 1978. Uniform Crime Reports, "Crime in Florida" for 1979.

Because of the new deterrency issue evidence assembled during the post Gregg and Coker era, because Petitioner contends that capital punishment violates the dignity of man concept in that the death penalty cannot be validated under the dignity of man theory merely because the State's taking of human life invades an interest proportionate to the interest invaded by a murder (see Radin, "The Jurisprudence of Death: Evolving Standards For The Cruel And Unusual Punishments Clause", at 1062), because the death penalty can no longer be sustained if solely based on the concept of retribution (see Coker v. Georgia at 620, Burger, C.J., and Rehnquist, J., dissenting), and further because an informed and enlightened citizenry would reject the blanket imposition of the death penalty for all homicides (see 1 Current Opinion, Apr. 1973; The Harris Survey, June 11 and 14, 1973; Vidmar and Ellsworth, Public Opinion And The Death Penalty; McClosky, Consensus and Ideology in American Politics; Protho and Grigg, Fundamental Principles of Democracy:

Basis For Agreement And Disagreement; New York Times, April 16, 1970; L. Bogart, Silent Politics; Gold, A Psychiatric Review of Capital Punishment; Jurow, New Data On The Effect Of A Death Qualified Jury On The Guilt Determination Process; and Sarat and Vidmar, Public Opinion, The Death Penalty and Eighth Amendment: Testing the Marshall Hypothesis) Petitioner submits this Court should determine anew the constitutionality of the death penalty in the decade of the 1980's.

Petitioner further shows that the question should also be reconsidered in that because this Court is regularly called upon to reverse legislative pronouncements or state supreme court decisions which contravene the cruel and unusual punishments clause (see Beck v. Alabama, ____U.S.____; and Godfrey v. Georgia, ____U.S.____, Supreme Court Docket No. 78-6899), it is virtually if not totally impossible to achieve objective standards in the imposition of the punishment (Godfrey v. Georgia, p. 2 of Marshall, J. and Brennan, J., concurring; see also Dix, Appellate Review of the Decision to Impose Death; and Black, Due Process For Death: Jurek v. Texas and Companion Cases.)

This Honorable Court is well familiar with the doctrine that the cruel and unusual punishments clause draws its meaning from the evolving standards of decency that mark the progress of a maturing society. Furman v. Georgia at 328; Robinson v. California at 666; Trop v. Dulles 356 U.S. 86; Weems v. United States 217 U.S. 349; Gregg v. Georgia at 173).

While it may be contended that three to four years is too short a time period to indicate that the values and standards of decency of the American public have progressed to such a degree that the death penalty should be declared unconstitutional, Petitioner submits that the rededication of the American public and its elected leadership to the concept of basic human rights and the near universal condemnation

of the Soviet invasion of Afghanistan, as clearly manifested in the boycott of the 1980 summer Olympic Games by athletes from the United States is indicative of a shift in attitudes that cannot be discounted.

This new awareness is most clearly manifested in speeches by former Secretary of State, Henry Kissenger, and President Jimmy Carter during which both leaders declared that the goals of government should be directed toward the fulfillment of human rights and human dignity (see Time Magazine, June 21, 1976 at 31; Congressional Quarterly Vol. 33 at 15-E and June 2, 1979 at 1047 and Vol. 36 at 204 and January 26, 1980 at 228; see also Congressional Quarterly Almanac, Vol. 33 at 67-A).

In summarizing the renewed American spirt toward/for human rights, President Carter stated in his January 23, 1980 State of the Union address:

> "Human rights policy commands the strong support of our citizens, and of the Congress. The world climate increasingly favors human rights progress." Congressional Quarterly, January 26, 1980 at 228.

Petitioner submits that the new evidence creates and mandates a new review of the constitutionality of the death penalty, especially in light of the following cogent observation of Justice White in Furman:

> "The imposition and execution of the death penalty are obviously cruel in the dictionary sense. But the penalty has not been considered cruel and unusual in the constitutional sense because it was thought justified by the social ends it was deemed to serve. At the moment that it ceases realistically to further these purposes, however, the emerging question is whether its imposition in such circumstances would violate the Eighth Amendment. It is my view that it would (emphasis supplied) for its imposition would then be the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes." Furman v. Georgia at 312 (White, J., plurality opinion).

II.

LOUISIANA'S STATUTE MANDATING REVIEW OF EVERY DEATH SENTENCE ON A JUDICIAL DISTRICT-WIDE BASIS RATHER THAN ON A STATE-WIDE BASIS TO DETERMINE EXCESSIVENESS CONSTITUTES A CONSTITUTIONALLY IMPERMISSIBLE SCOPE OF APPELLATE REVIEW THUS VIOLATING THE EIGHTH AND FOURTEENTH AMENDMENTS

Under Louisiana Supreme Court Rule 28, the district attorney of each judicial district in the state (a judicial district is usually composed of one or two parishes) is required to transmit to the state high court a synopsis of each first degree murder case in his district since January 1, 1976. Under this statutory scheme, the high court then compares a particular defendant's sentence as imposed by the jury with other previous sentences in the district in order to ascertain whether a sentence was imposed in an arbitrary or capricious manner.

This system differs dramatically from the procedures implementing statewide proportionate review as established by the states of Georgia, Florida and Texas and approved by this Court in Gregg v. Georgia previously cited), Profitt v. Florida, 428 U.S. 242 (1976) and Jurek v. Texas, 428 U.S. 262 (1976).

The Georgia statutory scheme, by far the most detailed and sophisticated, provides in part that its supreme court shall assemble the records of all capital felony cases after January 1, 1970 for the court's use in its comparative sentencing review. Ga.Code Ann. §27-2537(f). Under this system, the Georgia Supreme Court has implemented a scheme of review which substantially eliminates the possibility that a given defendant will be sentenced to death in an arbitrary and capricious manner. Gregg v. Georgia at 204-206 (see also Coley v. State, Moore v. State, Jarrell v. State and Smith v. State).

In addition, the Georgia Supreme Court's belief that statewide proportionate review of death cases is constitutionally and jurisprudentially mandated can be gleaned from the following declaration in Ross v. State:

> "The statutory requirement that this Court determine whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases provides a defendant with an added safeguard from the imposition of an arbitrary sentence. This purpose is ably served by reference to appealed cases which represent a sufficient cross section of similar cases upon which an adequate comparative review can be made." (emphasis supplied) Ross v. State, 211 S.E.2d 356.

It is submitted that the guidelines established by, at a minimum, Georgia, Florida and Texas as previously approved by this Court were specifically designed to protect defendants throughout the entire decision making process. If a given jury and/or sentencing authority were arbitrary and capricious in returning a death verdict, then appellate review is/was available to protect him. But likewise, it is inherent in the jurisprudence that the appellate process itself must not be arbitrary and capricious less it too run afoul of the Constitution and the decisions of this Court.

In Petitioner's case the Louisiana Supreme Court reviewed only two other murder cases in its review of his sentence, namely, Rodney O. Eaker, which was a non-capital case, and Dalton Prejean, as those being the only prior first degree murder cases from Petitioner's district reviewed under the statute. (In Eaker, the situation was basically that of a defendant claiming self defense and/or the defense of a woman in whose home he was visiting at the time the deceased allegedly violently entered the premises, while in Prejean the defendant was a generally poorly educated teenager who was convicted of killing a law enforcement officer).

Because of this limited scope of review, Petitioner submits that he has not only been denied equal protection of the law and due process vis-a-vis other defendants in larger districts with more homicides subject to comparative review, but further has been denied meaningful appellate review and a determination of whether there has been a "Meaningful basis for distinguishing the few cases in which (the penalty)

is imposed from the many cases in which it is not." Furman v. Georgia at 313, White, J., concurring. (See also Godfrey v. Georgia, supra.)

Accordingly, because Rule 28 of the Louisiana Supreme Court has deprived Petitioner of his constitutional guarantees and is thus contrary to the holdings in Furman, Gregg, Coker and Godfrey, Petitioner's sentence to death should be set aside.

III.

THE TRIAL COURT ERRED IN DENYING PETITIONER'S CHALLENGE FOR CAUSE OF PROSPECTIVE JUROR, VERA GLASS, IN VIOLATION OF PETITIONER'S RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

One of the cardinal precepts in American law is a defendant's right to a fair and impartial trial. Inherent in this guarantee is that one will be adjudged by jurymen free of preconceived notions as to guilt or innocence.

During the selection of Petitioner's petit jury, Vera Glass was summoned as a prospective juror. During her examination by counsel, Mrs. Glass revealed that her son was a deputy with the Ouachita Parish Sheriff's Department, that she knew many deputy sheriffs and that she had had discussions with her son regarding law enforcement. Her testimony likewise indicated that she would tend to believe law enforcement officers over lay witnesses. Further, one law enforcement officer, Reuben Simmons, who was known to the prospective juror, was listed as a prospective state's witness.

Petitioner submits that these prior contacts with law enforcement are significant in that at page 289 of the trial transcript, Mrs. Glass demonstrated her conviction that arrest is indicative of the guilt of an accused, while at page 291 she revealed that her contacts with law enforcement would prevent her from being fair and impartial. Likewise, she admitted to extensive discussions with her deputy son

during which he "drilled" into her mind the qualities of officers, and that these recollections would enter her thought processes during the sanctity of jury deliberation.

As further evidence of her disqualification, Mrs. Glass indicated that (1) she did not comprehend the presumption of innocence (transcript, p. 293), (2) an indictment ipso facto tends to show that an accused is guilty (transcript, p. 293, line 19 and transcript, p. 293 line 25 - p. 294, line 28), and (3) she was concerned that the deceased was approximately the same age as her mother (transcript, p. 297).

At transcript, p. 298, Mrs. Glass indicated that she would require the defendant to testify in his own behalf in order to consider a not guilty verdict. Likewise, she indicated she would "always wonder why" a given defendant failed to testify.

The trial court's attempt to rehabilitate this prospective juror on the latter response failed (transcript, p. 300) because at the end she never answered the Court's question as to whether she would attach any significance to the defendant's failure to testify.

The trial court's final question at transcript, p. 300 was: "Would you assume or presume that he was guilty simply because he did not choose to testify when he has a right to so do?" (emphasis supplied). We will never know if Mrs. Glass would have attached any significance, had she had the opportunity, to a given defendant's failure to testify. Of course, no one can as a matter of law, fact or practice, presume a defendant guilty if the only evidence for consideration is his refusal to testify. Further, one of a defendant's intrinsic rights is the right to refuse to testify (not a right to testify.

Petitioner submits that the totality of the circumstances indicates that Vera Glass, despite her attempted rehabilitation, would be incapable of serving as a fair and impartial juror and that Petitioner, under the dictates of the Sixth and Fourteenth Amendments, has suffered substantial prejudice by the trial court's refusal to sustain his challenge for cause.

IV.

THE EVIDENCE OBTAINED FROM PETITIONER AND/OR FROM PREMISES OR OBJECTS UNDER HIS AUTHORITY AND CONTROL SHOULD HAVE BEEN SUPPRESSED DUE TO UNCONSTITUTIONAL SEARCHES AND SEIZURES IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The Arkansas arresting officers testified that they arrested Petitioner based upon information contained in a police radio bulletin which misdescribed Petitioner's vehicle, apparently without knowledge of the existence or non-existence of an arrest warrant.

Historically, an arrest must be based upon probable cause, cf. Wong Sun v. United States, cited infra. Probable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge and of which he has reasonable information are sufficient to justify a man of average prudence or caution in believing that the person to be arrested has committed or is committing an offense. Beck v. Ohio, 379 U.S.89 at 91 (1964).

No facts, circumstances or testimony was presented at the pretrial suppression hearing concerning the details of the initial arrest. However, during the trial, the testimony revealed that Petitioner and two or more unknown people were apprehended as they exited an ElDorado, Arkansas restaurant (the other individuals were subsequently released) on the basis of a police radio bulletin which misdescribed the color and make or model of Petitioner's van.

Petitioner was physically searched at the time of and after his apprehension, his vehicle was brought to the jail by the Arkansas officers. Soon thereafter Petitioner signed a consent form to search his motel room in Arkansas, which said search was promptly conducted by West Monroe City Police officers in the presence of Arkansas officers,

wherein various items of physical evidence were seized. Soon thereafter, Petitioner, the items seized in the motel room and the van, with its contents, were brought to West Monroe City Jail. The van was searched following Petitioner's execution of a second consent form.

Petitioner submits that his arrest was illegal since it was not based upon probable cause. Whether an officer is authorized to make an arrest ordinarily depends in the first instance on state law, Michigan v. DeFillippo, ____U.S.____, 99 S.Ct. 2627 (1979). In the instant case Petitioner was apprehended by Arkansas authorities for Louisiana authorities on the strength of a confused vehicle description.

In United States v. Short, 570 F.2d 1051 (C.A.D.C. 1978), a police radio broadcast concerning a burglary in which one suspect was a black male approximately 18 to 19 years old, 5 feet 9 inches to 5 feet 10 inches tall, 145 to 155 pounds with a short afro-bush haircut and dark complexion, wearing a camel-colored waist length leather jacket and blue trousers did not (emphasis supplied) provide probable cause for an arrest nearby a short time later of a defendant who met the general description and was wearing a "reddish brown" jacket, since the description fit many young people in the area in question, particularly since a number of other suspects were also brought in for identification at the scene. A search conducted pursuant to a valid consent is constitutional, Schneckloth v. Bustamonte, 412 U.S. 218 (1973). To determine whether or not a consent was voluntary, the facts and circumstances of each case must be analyzed, Schneckloth v. Bustamonte, supra. In these circumstances, in determining whether evidence should be suppressed, the issue is whether Petitioner's post-arrest act of consenting to the searches, was the product of his free will rather than the result of an exploitation of his illegal arrest. Brown v. Illinois, 422 U.S. 590(1975). This Court has indicated several considerations which courts should take into account in deciding the aforesaid issue, to-wit: (1) whether

the governmental officers adequately informed the accused that he need not comply with their request, (2) the temporal proximity between the arrest and the act (consent) alleged to be involuntary, (3) the presence/absence of intervening circumstances, and (4) the purpose and flagrancy of the official misconduct, Brown v. Illinois at 603-604.

In the present situation the consent was inextricably linked to the initial arrest. Petitioner's vehicle had been seized by the officers and driven to the jail contemporaneously with Petitioner's arrest and without any consent or permission whatsoever. No probable cause to believe the motel room or vehicle contained evidence of a crime existed, nor were there exigent circumstances requiring a warrantless search, (see Chambers v. Maroney, 399 U.S. 42 (1970). The search of Petitioner at the arrest scene revealed a local motel room key. Shortly after his incarceration, West Monroe City Police officers arrived, and Petitioner consented to a search of the motel room without a warrant, and agreed to let the West Monroe police officers take his vehicle to West Monroe, Louisiana allowing same to subsequently search the van without a warrant.

No one informed Petitioner of his right to refuse consent to the searches.

The record discloses no intervening circumstances between the arrest and the consent that would vitiate prior illegalities.

Hence, the consent to search(es) must be considered to have been and were in fact obtained as a result of the exploitation of the original illegal arrest.

Since the arrest and search of Petitioner, his motel room and his van, is not supported by any valid grounds apart from that invalid consent, the evidence obtained through those searches should have been suppressed by the trial court.

In Wong Sun v. United States, 371 U.S. 471 (1963) this Honorable Court held that physical evidence as well as confessions obtained as a direct result of an arrest unsupported by probable cause must be suppressed. Accordingly, the trial court erred in admitting evidence obtained from Petitioner's motel and van in violation of his rights under the Fourth and Fourteenth Amendments.

CONCLUSION

For the foregoing reasons, a Writ of Certiorari should herein issue to review the judgment and opinion of the Louisiana Supreme Court.

Respectfully submitted,

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J. RANDOLPH SMITH

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GILMER P. HINGLE

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APPENDIX A

MAY 19 1980

SUPREME COURT OF LOUISIANA

NO. 66,033

STATE OF LOUISIANA

VERSUS

TIMOTHY GEORGE BALDWIN

ON APPEAL FROM THE FOURTH JUDICIAL DISTRICT
COURT, PARISH OF OUACHITA,
HONORABLE JOHN R. JOYCE, JUDGE

WATSON, Justice.*

Timothy George Baldwin and Marilyn Lee Hampton were indicted by a grand jury for the first degree murder of Mary James Peters, in violation of LSA-R.S. 14:30. The trials were severed and Baldwin was found guilty. After the sentencing portion of his trial, the jury unanimously recommended the death penalty. Two aggravating circumstances were found: that Baldwin was engaged in an armed robbery; and that the crime was committed in an especially heinous, atrocious and cruel manner. Defendant Baldwin has appealed, relying on forty assignments of error.

*Honorable Richard H. Gauthier participated in this decision as Associate Justice Ad Hoc.

Dennis J concurs w Dr Reasons.

FACTS

Timothy Baldwin, his wife Rita, and their seven children were neighbors of Mary James Peters in West Monroe, Louisiana, from 1971 until 1977. She was godmother to their youngest son, Russell. During the latter part of their stay in West Monroe, William Odell Jones also resided with the Baldwins. The group went to Bossier City for six months and then moved to Ohio. The oldest daughter, Michelle, remained in West Monroe with one brother. A second son entered the service. Marilyn Hampton and her three daughters stayed with the Baldwins in Ohio. Marilyn, Timothy Baldwin and her children then left, accompanied by Jones. Baldwin and Jones worked together in the business of installing aluminum siding. After the departure of her husband Rita Baldwin got in financial difficulties and was picked up on bad check charges. Her four younger children went to live with Michelle in West Monroe. Meanwhile, Timothy Baldwin, Jones, Marilyn Hampton and her three children led an itinerant existence. Their last means of transportation was a 1978 black Ford van, rented in Tampa, Florida. On April 4, 1978, Marilyn Hampton and Timothy Baldwin drove the van to West Monroe. Jones and the children stayed at a cabin in Holmes State Park, near Jackson, Mississippi. Baldwin and Marilyn Hampton visited Michelle's apartment in West Monroe but left there around 8:00 P.M. Shortly afterward, a van was seen parked in front of Mrs. Peters' house. A man and woman were observed leaving the residence between 10:00 and 11:00 P.M. Shortly before their departure, passerbys saw and heard indications that someone in the Peters' home was being beaten. Baldwin testified in his own behalf and admitted that he and Marilyn visited Mrs. Peters that evening, but denied the murder. Mrs. Peters, who was 85 years old, was beaten with various things, among them a skillet, a stool and a telephone. She remained on the kitchen floor overnight and was discovered the next morning shortly before

noon by Elsie Mae Brice, an employee of the Ouachita Council Meals on Wheels, who was bringing her noon meal. Although helpless and incoherent, Mrs. Peters tried to defend herself against the police officers and the ambulance attendants who took her to the hospital. Dr. A. B. Gregory saw her in the emergency room around 12:30 P.M. on April 5, 1978, and found her semi-comatose. Her left cheek bone and jaw bone were shattered; she had brain damage from multiple contusions and lacerations. According to Dr. Gregory, Mrs. Peters could not communicate rationally. She died the following day of the injuries. Dr. Frank Chin, who performed the autopsy, attributed her death to massive cerebral hemorrhage and swelling, secondary to external head injuries.

Timothy Baldwin and Marilyn Hampton were subsequently located in El Dorado, Arkansas. Timothy Baldwin signed consents for the search of their motel room and the van. Two blue bank bags, one empty and one containing savings bonds and certificates of deposit payable to Mary James were found in the van.[1] Jones, to whom Marilyn Hampton and Timothy Baldwin had made inculpatory statements both before and after the crime, helped police officers locate a safe which had belonged to the victim in the LaFourche Canal in West Monroe. Baldwin's finger and palm prints were found on various items in the Peters' home: a cigarette lighter, a television set and a coffee cup.

ASSIGNMENT OF ERROR NUMBER ONE

Defendant contends that the trial court erred in denying his motion for a change of venue. The evidence at the hearing on the motion was that the newspaper coverage was routine for a murder case. A television story quoted the police chief as

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Footnote 1: Mary James was the victim's name prior to her last marriage.

saying the crime was "savage" (Tr. 277) and a reporter characterized it as a "brutal slaying" (Tr. 278). However, these descriptions are not exaggerated. The lay witnesses at the hearing were generally unfamiliar with the crime although some had a sketchy impression about it from the news media. The only one who testified that the public had a preformed opinion about defendant's guilt was Ludvic Herlevic, who had known the victim all of his life and took her to church every Sunday. Defendant did not prove that there was such prejudice in the collective mind of the community that a fair trial was impossible. LSA-C.Cr.P. art. 622. There was no difficulty in securing an impartial jury. Although only three months elapsed between the murder and the trial, many of the prospective jurors were competely unaware of the crime. The severe offense apparently had little impact on the community. Only one challenge for cause was granted because the prospective juror had a preconceived idea about Baldwin's guilt. There was no basis for a change of venue and the trial court correctly denied the motion. State v. Clark, 340 So.2d 208 (La.,1976); State v. Smith, 340 So.2d 222 (La.,1976).

This assignment lacks merit.

ASSIGNMENTS OF ERROR NUMBER TWO, THREE AND FOUR

Defendant contends that the trial court should have allowed him to enter a plea of not guilty by reason of insanity; should have appointed a sanity commission and should have provided him with an expert psychiatrist at State expense. LSA-C.Cr.P. art. 561 provides that a defendant may withdraw a plea of not guilty and enter the alternate pleas of not guilty

and not guilty by reason of insanity within ten days after arraignment, but the court may thereafter allow such a change "for good cause". The trial court found no cause for the change here. At the hearing on the motion for a change of plea, the only evidence of impaired mental capacity was testimony that Baldwin had been a heavy drinker. Compare State v. Taylor, 229 So.2d 95 (La.,1970), where there was both lay and medical evidence of insanity. The trial court correctly concluded that there were no indicia of insanity, and no basis for the appointment of a psychiatrist or a sanity commission. LSA-C.Cr.P. art. 643; State v. Clark, 367 So.2d 311 (La.,1979).

These assignments of error lack merit.

ASSIGNMENT OF ERROR NUMBER FIVE

Defendant objects to the trial court's denial of his motion to suppress the evidence seized from the Arkansas motel and the Ford van. There is no question that Baldwin was legally arrested pursuant to a valid warrant. At the hearing on the motion to suppress, four Louisiana detectives testified that Baldwin's written consents to the searches were given freely and voluntarily. Baldwin testified that he was not presented with a warrant for the searches. On cross-examination, he was asked to identify his signatures on the two documents giving permission for the searches and seizures. Counsel attempted to invoke Baldwin's Fifth Amendment privilege against self-incrimination, but the trial court required him to respond. By taking the stand at the suppression hearing, Baldwin subjected himself to cross-examination on the issues relevant to that hearing. State v. Lukefahr, 363 So.2d 661 (La.,1978). Any consent to the searches was relevant to the question of whether the evidence should have been suppressed. The trial court did not err in

requiring Baldwin to identify his signatures. The State carried its burden of proving that Baldwin's consent to the searches was voluntary and uncoerced.

This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER SIX, SEVEN, EIGHT AND TEN

The defense exhausted its peremptory challenges and complains of the trial court's failure to excuse four prospective jurors for cause. The defense challenged all four peremptorily.

It is contended that Ernest Stansel should have been excused because of his personal friendship with Carlton Traweek, a police officer who testified for the prosecution, and because he had a fixed opinion about defendant's guilt.

Although prospective juror Stansel had formed an opinion about defendant's guilt or innocence, he testified that this would not affect his decision and that he could be fair as a juror. Stansel said that his personal friendship with Traweek would not make him believe Traweek's testimony over that of any other witness and would not influence his verdict. Stansel testified that he could vote impartially after listening to the evidence.

It is also argued in brief that Stansel was a personal friend of investigator Charles Dortch, who assisted the prosecution, but Stansel's testimony was that he knew Dortch only to the extent of knowing who he was.

The relationship between Stansel and Traweek was not within the purview of LSA-C.Cr.P. art. 797(3).[1] State v. Watson, 301 So.2d 653 (La.,1974). Stansel was competent to serve as a juror. LSA-C.Cr.P. art. 797(2).[2] There was no abuse of discretion in denial of the challenge for cause.

Defendant contends that prospective juror George A. Wood should have been excused because he had served as assistant chief of police for the City of Monroe. Although Wood had served twenty-one years with the Monroe Police Department, he said that he would be fair to both sides in his deliberations. He had been retired for sixteen years at the time of trial. He testified that he would not believe a police officer merely because he was an officer and that he would find defendant not guilty if he had a reasonable doubt in the matter. Woods had no particular connections with this defendant which would have made him ineligible to serve as a juror. Compare State v. McIntyre, 365 So.2d 1348 (La.,1978). The trial court correctly found that Woods' testimony on voir dire showed that he would be a fair and impartial juror, despite his background in police work. See State v. Qualls, 353 So.2d 978 (La.,1977).

Footnote 1: LSA-C.Cr.P. art. 797(3) provides:

> "The relationship, whether by blood, marriage, employment, friendship, or enmity between the juror and the defendant, the person injured by the offense, and the district attorney, or defense counsel, is such that it is reasonable to conclude that it would influence the juror in arriving at a verdict;".

Footnote 2: LSA-C.Cr.P. art. 797(2) provides:

> "The juror is not impartial, whatever the cause of his partiality. An opinion or impression as to the guilt or innocence of the defendant shall not of itself be sufficient ground of challenge to a juror, if he declares, and the court is satisfied, that he can render an impartial verdict according to the law and the evidence;".

Defendant contends that the trial court erred in failing to grant its challenge for cause of prospective juror Manning H. Kemp. Kemp's brother-in-law is a Monroe police officer and he is personally acquainted with other law enforcement people. Kemp stated that the relationship would not influence him but admitted that he would favor the testimony of a police officer over that of the defendant because police officers are trained observers, and have nothing to gain by giving false testimony. When examined by the court, Kemp said that he would give believable testimony from a stranger, which he had no reason to doubt, equal weight with that of a police officer. He testified that he had no preconceived notions about the case and could be a fair and impartial juror, free of any prejudice. Like the prospective juror in State v. Governor, 331 So.2d 443 (La.,1976), Kemp said he would consider the testimony as a whole. He agreed that policemen can make mistakes and said he would not exclude testimony contra to that of a policeman.

Kemp was not unqualified to serve as a juror merely because he regarded policemen as trained observers. This does not imply that he would therefore accept their testimony without question. There was no abuse of discretion in refusal of the challenge for cause. State v. Allen, 380 So.2d (La.,1980).

Both the State and the defense attempted to challenge prospective juror Vera Glass for cause: the State because of her views on capital punishment; and the defense because she thought an indictment was some indication of guilt, tended to believe law enforcement officers over lay witnesses, and felt that defendant should testify in his own behalf. When the court instructed Ms. Glass that she could not consider the fact that

defendant had been indicted as an indication of guilt, she answered that she would not. Ms. Glass' son had been a deputy and she knew other law enforcement officers. She tended to believe police officers because of her son's conscientious attitude about the law and admitted that past discussions with her son would probably affect her. Ms. Glass also admitted that the fact that she had an eighty-five year old mother might influence her and that she would always wonder why a defendant failed to testify. However, she responded to the court's rehabilitating questions correctly and stated that she could base her decision solely on the evidence presented and the instructions given by the court. Ms. Glass indicated that she would accept what the court told her regarding the weight to be given to the testimony, the presumption of innocence, and the defendant's constitutional right to refuse to testify. Her responses show no bias. Despite some confusion, she apparently understood the trial judge's instructions. She was able to extract the gist of his explanation that an indictment cannot be regarded as evidence of guilt and restate it in her own words (Tr. 843-844). Her comprehension was sufficient to make her a competent juror. Compare State v. Nolan, 341 So.2d 885 (La.,1977). There was no abuse of discretion in the refusal to allow the challenge for cause.

These assignments of error lack merit.

ASSIGNMENT OF ERROR NUMBER NINE

Defendant contends that a mistrial should have been granted because one of the jurors, Judy Dell Puckett, perjured herself on voir dire. During the trial, it developed that Ms. Puckett knew District Attorney Parkerson and defendant contended

that she had denied knowing anyone who worked in the district attorney's office. Ms. Puckett had first been asked on voir dire if she knew anyone in law enforcement. She replied that she did not know anyone currently with the Sheriff's Department. She was not asked if she knew anyone in the District Attorney's office, but only what contact she had had with that office in connection with the theft of her car. She replied that Deputy Gene Hatten took care of the matter and she did not talk to anyone else at the District Attorney's office on that occasion. No false statement was made by Judy Puckett. The trial court found no impediment to a fair trial and correctly denied the mistrial. State v. Forbes, 348 So.2d 983 (La.,1977).

This assignment of error lacks merit.

ASSIGNMENTS OF ERROR NUMBER ELEVEN AND TWELVE

These assignments of error relate to allegedly prejudicial rulings relative to the examination of State witness Doris Ellen Baldwin. When the State tried to impeach Doris Baldwin's testimony, the trial court ruled that the State had failed to show either surprise or hostility. LSA-R.S. 15:487, 488. The trial court did, however, allow her to answer a question which was ruled "leading" and a question on re-direct examination which exceeded the subject matter of cross-examination.

Doris Baldwin initially testified that she had talked with Bill Jones on Thursday, April 6, but did not remember whether she had talked to her father that day or not. The State attempted to impeach her on the basis of a prior inconsistent statement. The court made an in camera examination of the statement and found no real inconsistency, but ruled that the State could clarify "hazy areas" (Tr. 1279). Ms. Baldwin

was then asked:

> "Miss Baldwin isn't it true that in fact you did receive a phone call from Bill and your father about 5:30 on the evening of Thursday...". (Tr. 1282)

The court ruled that the question was leading but not objectionable or prejudicial. Doris Baldwin was allowed to answer yes. When she was queried as to the content of the conversation, the trial court sustained an objection. The trial court did not abuse its discretion in allowing the first question. LSA-R.S. 15:277 prohibits leading questions to one's own witness. Even if the question were leading in that it suggested the phone call had been received, allowing the witness to answer it did not prejudice defendant. State v. Quincy, 363 So.2d 647 (La.,1978).

The State attempted to ask Ms. Baldwin whether she observed any injury to Barbara Hampton's face on Wednesday, April 6, and the trial court maintained an objection on the ground that the subject was not covered on cross-examination. LSA-R.S. 15:281. Counsel for the State then stated that he would recall the witness and defendant consented to the question. By consenting to the questioning, defense counsel waived his objection.

These assignments of error lack merit.

ASSIGNMENT OF ERROR NUMBER THIRTEEN

Defendant contends that the trial court erred in allowing irrelevant testimony of William Odell Jones in regard to the relationship between Marilyn Hampton and defendant. It is contended that defendant was placed in a bad moral light as one who left his wife for another woman. There is no basis for the contention because both Rita and Timothy Baldwin also testified about the relationship, and Jones' testimony did not add anything.

This assignment of error lacks merit.

ASSIGNMENTS OF ERROR NUMBER FOURTEEN, FIFTEEN, SIXTEEN, SEVENTEEN AND EIGHTEEN

These assignments of error are directed to the testimony of William Odell Jones that Timothy Baldwin told him he would kill Ms. James [the name by which he knew Ms. Peters] if necessary to get her money. The hearsay testimony was allowed to show defendant's specific intent to murder the victim. LSA-R.S. 15:446. The statements were unquestionably voluntary. Defendant received pre-trial notice that the statements would be used in evidence, and the statements were admissible to prove Baldwin's motive and intention. State v. Weedon, 342 So.2d 642 (La.,1977). They showed Baldwin's state of mind immediately prior to the murder.

These assignments of error lack merit.

ASSIGNMENTS OF ERROR NUMBER NINETEEN, TWENTY, TWENTY-ONE, TWENTY-TWO, TWENTY-THREE, TWENTY-FOUR, TWENTY-FIVE, TWENTY-SEVEN, AND TWENTY-EIGHT

Defendant contends that testimony about his arrest in Arkansas and the searches should not have been allowed because there was no probable cause for his arrest, and the searches of the motel room and the van were illegal. Since the arrest was legal and he consented to the resulting searches and seizures, testimony about the circumstances was clearly admissible.

These assignments of error lack merit.

ASSIGNMENT OF ERROR NUMBER TWENTY-SIX

Defendant complains that the trial court erred in denying a mistrial when the prosecuting attorney alluded to an appeal.

Defense counsel repeatedly objected to the testimony from the Arkansas deputies and others about the circumstances surrounding the arrest, searches and seizures. In response to one of these objections, the prosecution stated, "... counsel has reserved his rights for appeal, ...". (Tr. 1432) It is contended that the remark was improper and prejudicial, indicating to the jury that defendant would be convicted and would then appeal. Further, it is argued that the jury would regard the appellate process as another type of trial rather than a review of the record and the remark might induce them to convict the defendant because there would be another trial of his guilt or innocence. LSA-C.Cr.P. art. 775 provides in pertinent part:

"Upon motion of a defendant, a mistrial shall be ordered, and in a jury case the jury dismissed, when prejudicial conduct in or outside the courtroom makes it impossible for the defendant to obtain a fair trial, or when authorized by Article 770 or 771."

The trial court in its per curiam noted that in its opinion the word appeal did not necessarily connote a guilty verdict in the minds of the jurors. The trial court stated at the time that he did not feel the remark prejudiced defendant, but offered to admonish the jury. Defense counsel declined the admonishment on the ground that it would merely draw attention to the word appeal.

Mere use of the word appeal does not have the prejudicial effect argued by defense counsel. The trial court stated in its per curiam that the jurors' understanding of the judicial process was such that they would probably expect an appeal to result from a trial in all circumstances. The trial court did not feel the word necessarily connoted a conviction or guilty verdict. The remark is not within those enumerated in LSA-C.Cr.P. art. 770 as mandating a mistrial. It is only when the prejudice created by a remark prevents a fair trial and an admonition is insufficient that a mistrial should be ordered. LSA-C.Cr.P. art. 771. An admonition would have been sufficient here. Since defendant declined to request one, he cannot complain of any prejudice resulting from its omission. The drastic remedy of a mistrial was not warranted. State v. Heads, 370 So.2d 564 (La.,1979); State v. Matthews, 354 So.2d 552 (La.,1978). It is unlikely that the jury was aware that there is an appeal only from a conviction. No substantial prejudice was demonstrated.

This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER TWENTY-NINE

Defense counsel objects to the State being allowed to recall a witness to elicit testimony which exceeded the scope of cross-examination. LSA-R.S. 15:281 places the scope of redirect examination within the trial judge's discretion, and LSA-C.Cr.P. art. 765(5) allows the trial court to permit additional evidence prior to argument.

There was no error in allowing the witness to be recalled and defense counsel waived his right to further examination of the witness by stating "that's all we have" (Tr. 1482).

This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER THIRTY

It is contended that the trial court erred in allowing Detective Larry Norris to testify as an expert in fingerprint identification. Norris had been the fingerprint officer for the West Monroe police department for eighteen months and had worked in the development of latent fingerprints for six years. He had specialized in comparison of latent fingerprints for fourteen months prior to trial and had attended various special schools: the Law Enforcement Training Academy at LSU in Baton Rouge; the F.B.I. School at LSU; and the F.B.I. Academy in Quantico, Virginia. See State v. Lewis, 351 So.2d 1193 (La.,1977); State v. Madison, 345 So.2d 485 (La.,1977); and State v. Overton, 337 So.2d 1201 (La.,1976). Norris' testimony shows complete familiarity and knowledge of the subject of fingerprint identification. The trial court did not err in accepting him as an expert in the field of fingerprint identification.

This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER THIRTY-ONE

Defendant complains about the admission in evidence of Exhibit S-34, a photographic enlargement of a latent palm print found on a cigarette lighter at the scene of the crime and a photographic enlargement of defendant's palm. The exhibit enlarged the photographs to enable the jury to make a visual comparison. A photograph which is otherwise admissible should not be excluded merely because presented in an enlarged form. It is only when the enlargement misrepresents the evidence that such a photograph should be excluded. It is contended that the enlarged prints are not the best evidence because of distortion, but the claim that the enlargements distort the evidence is not substantiated in any particular.

This assignment of error lacks merit.

ASSIGNMENTS OF ERROR NUMBER THIRTY-TWO AND THIRTY-THREE

Defendant contends that he was prejudiced by the State's failure to allow pretrial examination of photographs taken at the site where the safe was found in the LaFourche Canal. Counsel for defendant moved for a mistrial, and the motion was denied. The court allowed defense counsel to view the photographs during a trial recess. A motion was then made to exclude the pictures and all testimony concerning them because of the State's failure to disclose them prior to trial. LSA-C.Cr.P art. 729.5. The trial court ruled that there was no prejudice to the defense and allowed the evidence to be admitted.

The photographs were taken on the morning of the day they were introduced into evidence and could not have been made available

prior to trial. The recess to enable defense counsel to examine the evidence cured any surprise and eliminated the necessity of the evidence being excluded. The photographs themselves were not inflamatory or prejudicial; they merely illustrated the scene where the safe was discovered. Allowing defense counsel to view the photographs prior to their introduction was sufficient to assure a fair trial. The trial court found no evidence of bad faith on the part of the State, and there was no abuse of discretion in allowing the photographs into evidence.

These assignments of error lack merit.

ASSIGNMENT OF ERROR NUMBER THIRTY-FOUR

Defense counsel moved to exclude testimony by District Attorney Parkerson on the ground that he did not appear on the State's original witness list, and the trial court denied the motion. This is assigned as error.

District Attorney Parkerson was called to rebut an inference of immunity to witness Jones. The State did not know his presence was necessary until the immunity issue was raised, and he was not sequestered. There was no abuse of discretion in allowing the witness to testify. LSA-C.Cr.P. art. 764; State v. Bell, 346 So.2d 1090 (La.,1977). The contention that the testimony of a public figure creates an impression of guilt is not justified here, where the only subject was immunity for Jones. Nothing in the testimony indicates a personal belief in defendant's guilt or would create that impression in others.

This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER THIRTY-FIVE

Defendant objects to admission into evidence of various State exhibits.

A black and white photograph of the victim is allegedly more prejudicial than probative. The photograph (S-16G) shows the extent of the injuries, the identity of the victim and the probable cause of death. It is unpleasant but not gruesome. The probative value outweighs any prejudice. State v. Trass, 347 So.2d 1156 (La.,1977).

Other objects were objected to on the ground of improper identification and an improper chain of custody. These contentions are unfounded.

This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER THIRTY-SIX

Defendant complains that the trial court erred in refusing to give requested special charge, number 3 as follows:

> "The prosecution must prove beyond a reasonable doubt, not only that the offense was committed as alleged in the indictment, but that the defendant was the person who committed it. You must be satisfied beyond a reasonable doubt of the accuracy and correctness of the identification of the defendant before you may convict him.
>
> "You are further instructed that it is not necessary for the defendant to prove that another person may have committed the crime; if the circumstances of the identification are not convincing beyond a reasonable doubt, you must find the defendant not guilty." (Tr. 148, 149)

The trial court concluded that the charge was covered by the general charges which stated in pertinent part:

"If you entertain any reasonable doubt as to any fact or element necessary to constitute the defendant's guilt, it is your sworn duty to give him the benefit of that doubt and to return a verdict of acquittal." (Tr. 152)

"[If] you find the evidence unsatisfactory upon any single point indispensably necessary to constitute the accused's guilt, this would give rise to such a reasonable doubt as would justify you in rendering a verdict of not guilty." (Tr. 153)

The general charges made it clear to the jury that every element of the crime including the identity of the defendant had to be proven. ~~State v. Ritchey, 249 So.2d 143 (La.,1971),~~ State v. Stewart, 357 So.2d 1111 (La.,1978).

This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER THIRTY-SEVEN

Defendant contends that the trial court should have given requested special charges relating to the plea of not guilty by reason of insanity. Since there was no plea of not guilty by reason of insanity, the charges were inappropriate and correctly denied. LSA-C.Cr.P. art. 803.

This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER THIRTY-EIGHT

Defendant contends that the trial court should have granted a motion for new trial on the ground that there was no evidence of specific intent at the time of the crime. It is contended that defendant may not have realized the consequences of his act because of his mental state or intoxicated condition. The evidence does not establish that defendant was too intoxicated to realize what he was doing at the time the crime was committed, and there is ample evidence of the requisite specific intent at the time the crime was committed.

This assignment of error lacks merit.

ASSIGNMENTS OF ERROR NUMBER THIRTY-NINE AND FORTY

Defendant contends that the trial court should have granted his motion to arrest judgment and erred in overruling his objection to imposition of sentence.

The State rested its case at the sentencing hearing on the trial testimony. No additional evidence was presented to show the cruel nature of the offense. Consequently, it is contended that evidence of heinousness was introduced at the guilt portion of the trial in violation of State v. Payton, 361 So.2d 866 (La.,1978).

Because of the particular nature of this crime, the evidence of the cause of death necessarily included some description of Ms. Peters' physical condition. An inference would arise that the crime was a cruel one, but this is not because any effort was made by the State to stress this aspect of the matter. Evidence of the cause of death was admissible and

in itself showed the crime to have caused great pain and suffering.

At sentencing, the jury found two aggravating circumstances. The jury was charged as to the statutory mitigating circumstances and there is no reason to believe that these were not properly considered since the verdict states that the recommendation was made "after consideration of the mitigating circumstances" (Tr. 162).

The evidence supports the jury's conclusion that the crime was committed during an armed robbery and that the offense was committed in an especially cruel manner.

These assignments of error lack merit.

SENTENCE REVIEW

Art. 1, §20 of the Louisiana Constitution of 1974 prohibits excessive punishment. LSA-C.Cr.P. art. 905.9 mandates that each death sentence be reviewed to determine if it is excessive under the circumstances. The criteria for review are:

> "(a) whether the sentence was imposed under the influence of passion, prejudice, or any other arbitrary factors, and
>
> "(b) whether the evidence supports the jury's finding of a statutory aggravating circumstance, and
>
> "(c) whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant."

A. PASSION, PREJUDICE OR OTHER ARBITRARY FACTORS

There is no evidence that Baldwin's sentence was imposed because of passion, prejudice or other arbitrary factors.

B. AGGRAVATING CIRCUMSTANCES

(1) Armed Robbery

Timothy Baldwin admitted that he was carrying a knife when he went to Ms. Peters' house the night of the murder. The knife did not show any evidence of blood, but the other items used to beat Ms. Peters were dangerous weapons in the manner used. State v. Bonier, 367 So.2d 824 (La.,1979); LSA-R.S. 14:2(3). The safe and its contents which were taken from the premises were in Ms. Peters' immediate control, though not on her person. The fact that the safe was taken from the bedroom and Ms. Peters

was beaten in the kitchen is immaterial. The property was in Ms. Peters' home and under her control. State v. Verret, 174 La. 1059, 142 So. 688 (1932).

There is no doubt that Baldwin was engaged in an armed robbery when he killed Ms. Peters. The jury correctly found that statutory aggravating circumstance to be present. LSA-C.Cr.P. art. 905.4(a).

(2) CRUELTY

An especially cruel murder is one that causes death in a particularly painful and inhuman manner. While this aggravating circumstance necessarily involved some degree of subjectivity, the facts reflect that Ms. Peters was severely beaten with various objects including a skillet, a stool and a telephone, and left to die a lingering death. There can be no question that a prolonged beating is an especially cruel way to commit murder. This is particularly true when the blows are inflicted upon an aged female, who is unable to effectively resist. Ms. Peter's feeble effort to fight her rescuers shows that she was conscious on some level of the need to defend herself. Unable to summon help, she had remained in terror for approximately twelve hours before she was discovered. The record does not clearly show whether Baldwin was aware that he had left Ms. Peters to die a slow death. Undoubtedly he assumed she could not survive his merciless beating or he would not have left her with the possibility of later identifying him. However, he made no effort to end her miserable and suffering condition. His action was atrocious in that it violates the bounds of common decency. The jury correctly found that this murder was committed in an especially heinous, atrocious and cruel manner. LSA-C.Cr.P. art. 905.4(g).

The evidence supports both of the statutory aggravating circumstances found by the jury.

C. DISPROPORTIONATE SENTENCE

The sentence review memorandum on behalf of the State of Louisiana shows two other first degree murder convictions in Ouachita Parish between January 1, 1976, and September 5, 1978. One defendant, Charlie Lee Carter, was sentenced to life imprisonment and the other, Dalton Prejean, was given the death penalty. Charlie Lee Carter was a twenty-six year old male, who murdered Alfred C. Carter with a pistol. There were no aggravating circumstances and the jury recommended the lesser penalty of life imprisonment. Dalton Prejean, aged seventeen, killed police officer Donald Cleveland with a revolver. The aggravating circumstance was that the victim was a peace officer engaged in his lawful duties. LSA-C.Cr.P. art. 905.4(b). Despite the mitigating circumstance of Prejean's youth, he received the death penalty. LSA-C.Cr.P. art. 905.5(f).

Considering this sentence in relation to the mitigating circumstances in LSA-C.Cr.P. art. 905.5, the Post Sentence Report shows that Baldwin has a prior history of criminal activity commencing at an early age.

There is no evidence that the crime was committed under the influence of mental or emotional disturbance. Dr. John N. Ritchey and Dr. Merritt N. Dearman, a psychiatrist, concluded that Baldwin did not have any mental disorder which prevented him from understanding the proceedings against him and assisting counsel in his defense. Neither doctor found a psychiatric illness or any evidence to suggest a history of psychosis. Dr. Ritchey stated that Baldwin has a "Character Disorder" but no mental impairment. Dr. Dearman felt that Baldwin falls into the category of a "socio-pathic personality, anti-social type."

There is no evidence that Baldwin was under the influence of another person when the crime was committed. On the contrary, he has a strong personality and was a leader rather than a follower, as in his relationship with Jones.

Baldwin did not claim any extenuation for his conduct. Although he denied the crime in interviews with the two physicians, he admitted that Ms. Peters endured "a very brutal death".

There is evidence that Baldwin was drinking on the evening of the crime, but nothing to suggest that his intoxication was such that he was unaware of what he was doing. Far from exhibiting a mental defect, Baldwin is of above average intelligence and claimed an I.Q. of 147.

Dr. Dearman gave Baldwin's date of birth as September 17, 1937, and the Post Sentence Report gives his date of birth as September 17, 1942. Regardless of which is correct, he is a mature man with a large family and not a youthful offender.

There is no evidence that Baldwin's participation in the crime was minor. Although the testimony of his wife and two of his children indicate that Baldwin was at one time a good husband and father this was not the case for a long time prior to the murder. He had left his wife and family, and was not supporting them. It is contended that his high I.Q. would enrich the prison community, but, in view of the doctors' evaluation of his personality, it is doubtful that this would be the case.

The record does not establish that Baldwin's death sentence is disproportionate when viewed in comparison with that meted out for similar crimes or that the sentence is excessive.

For the reasons assigned, the conviction and sentence are affirmed.

AFFIRMED.

MAY 2 3 1980

SUPREME COURT OF LOUISIANA

NO. 66,033

STATE OF LOUISIANA

VERSUS

TIMOTHY GEORGE BALDWIN

DENNIS, Justice, concurring.

I respectfully concur.

I remain of the belief that our scheme for review of the proportionality of the imposition of the death penalty is constitutionally flawed in not mandating statewide review of the sentences imposed in similar cases. See State v. Prejean, 379 So.2d 240, 249 (La. 1980) (dissenting from denial of rehearing). However, the extraordinary deliberateness and brutality of this murder of an 84-year old woman for her valuables clearly justifies the death penalty without need of extensive comparison with other offenses.

* * *

APPENDIX B

UNITED STATES OF AMERICA

STATE OF LOUISIANA

SUPREME COURT OF THE STATE OF LOUISIANA

NEW ORLEANS, 70112

New Orleans, October 6, 1980.

Court was duly opened pursuant to adjournment. Present Their Honors: Chief Justice John A. Dixon, Jr., Pascal F. Calogero, Jr., Walter F. Marcus, Jr., James L. Dennis, Fred A. Blanche, Jack Crozier Watson, Harry T. Lemmon, Associate Justices.

REHEARING DENIED:

* *

66,033 State of Louisiana vs. Timothy George Baldwin

* *

I, Frans J. Labranche, Jr., Clerk of Court, Supreme Court of Louisiana, do hereby certify the above to be a true and correct extract from the minutes of this Court.

IN WITNESS WHEREOF, I hereunto sign my name and affix the seal of the Court aforesaid, at the City of New Orleans, this 17th day of November, 1980.

Clerk of Court

Supreme Court of the United States

No. A-366

TIMOTHY GEORGE BALDWIN,

Petitioner,

v.

LOUISIANA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(~~x~~),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including January 4, 1981.

/s/ Lewis F. Powell, Jr.
Associate Justice of the Supreme Court of the United States

Dated this 28 day of October, 1980.

APPENDIX D

STATE OF LOUISIANA ** PARISH OF OUACHITA ** FOURTH JUDICIAL DISTRICT COURT

NO. 38 292

STATE OF LOUISIANA *

VERSUS *

TIMOTHY GEORGE BALDWIN *

FILED: October 9, 1980

BY: Dorothy L. Dees
DEPUTY CLERK OF COURT

WARRANT FOR EXECUTION OF PERSON CONDEMNED

TO: Hon. C. Paul Phelps
Secretary of the Department of Corrections
State of Louisiana
Department of Corrections
Post Office Box 44304
Capitol Station
Baton Rouge, Louisiana 70804

WHEREAS, it appears from the annexed duly certified copy of the indictment, verdict, including the finding of guilt, jury recommendation, sentence and the judgment of the Supreme Court of Louisiana affirming the sentence of death, that at a session of the Honorable, the Fourth Judicial District Court for the Parish of Ouachita, State of Louisiana, and held beginning on the 24th day of July, 1978, Timothy George Baldwin was convicted on the 28th day of July, 1978, of the crime of First Degree Murder of Mary James Peters, in violation of La. R.S. 14:30, and that on the 28th day of July, 1978, the jury unanimously recommended that said defendant be sentenced to death and unanimously found the following aggravating circumstances, to-wit: "The offender was engaged in the perpetration or attempted perpetration of armed robbery" and "The offense was committed in an especially heinous, atrocious or cruel manner"; and that in accordance with the said recommendation of the jury, His Honor, John R. Joyce, of said Court, sentenced the said Timothy George Baldwin to death on the 5th day of September, 1978; and that the said conviction and said sentence of death has been finally affirmed by the Supreme Court of Louisiana;

NOW, THEREFORE, I, JOHN R. JOYCE, Judge of the Fourth Judicial District Court, being the court of original jurisdiction, and in accordance with La. R.S. 15:567, do hereby direct and command you to cause the execution

of TIMOTHY GEORGE BALDWIN, the person condemned in all things according to the judgment and sentence of said Court and the law in all such cases made and provided, on Thursday, the 8th day of January, 1981, by electrocution, between the hours of 12:00 O'Clock midnight and 3:00 O'Clock A.M. Said execution shall take place at the Louisiana State Penitentiary at Angola, in a room entirely cut off from view of all except those permitted by law to be in said room. Said execution shall take place in the presence of the Warden of the Louisiana State Penitentiary at Angola, or a competent person selected by him, the Coroner of the Parish of West Feliciana, or his deputy, and a physician summoned by the Warden of the Louisiana State Penitentiary at Angola, the operator of the electric chair, who shall be a competent electrician who shall have not been previously convicted of a felony, a priest or minister of the gospel, if the convict so requests, and not less than five nor more than seven other witnesses, all citizens of the State of Louisiana; no person under the age of eighteen years shall be allowed within said execution room during the time of execution. When the sentence shall have been executed, the Warden of the Louisiana State Penitentiary at Angola, or his deputy performing the execution, shall make a process verbal of said execution immediately thereafter, which process verbal shall recite the manner and date of said execution and shall be attested by said Warden, or his deputy, and by all of the witnesses, and said process verbal, when so signed, shall be filed with the Clerk of Court of the Fourth Judicial District, Parish of Ouachita, State of Louisiana, together with the annexed duly certified copy of the proceedings had in said case, and all to be in accordance with law, and for all of which this shall be your warrant and authority.

A certified copy of this warrant shall be mailed by the Clerk of Court of the Parish of Ouachita to the Governor of the State of Louisiana, return receipt requested, and the return receipt shall be filed in the record of these proceedings upon its return to the said Clerk of Court.

Upon receipt of this warrant the Secretary of the Department of Corrections shall cause a copy of said warrant to be delivered to the person condemned.

Given under my signature and the seal of the Fourth Judicial District Court for Ouachita Parish, Louisiana, and thus done, rendered, read, signed and ordered in Open Court in the City of Monroe, Parish of Ouachita, State of Louisiana, on this 9th day of October, 1980.

JOHN R. JOYCE
DISTRICT JUDGE

A TRUE COPY
BY. CLERK OF COURT
OUACHITA PARISH, LA.

STATE OF LOUISIANA VS TIMOTHY GEORGE BALDWIN

No. 38 292

INDICTMENT FOR

FIRST DEGREE MURDER

Filed in Open Court:
May 23, 1978
Dorothy L. Dixon
Deputy Clerk of Court

STATE OF LOUISIANA, PARISH OF OUACHITA, FOURTH JUDICIAL DISTRICT COURT

THE GRAND JURORS of the State of Louisiana, good and lawful men of the Parish aforesaid, duly empanelled, sworn and charged to inquire for the body of the said Parish, acting in the name and by the authority of the State of Louisiana, on their oath present, that TIMOTHY GEORGE BALDWIN late of the Parish aforsaid, in the Fourth Judicial District of the State of Louisiana, on or about the 4th day of the month of April Anno Domini, nineteen hundred and seventy-eight in the Parish, District and State aforesaid, did then and there wilfully and feloniously: commit first degree murder of Mary James Peters, contrary to the provisions of R.S. 14:30;

A TRUE COPY
DY. CLERK OF COURT
OUACHITA PARISH, LA.

contrary to the form of the statute of the State of Louisiana in such case made and provided, in contempt of the authority of the State of Louisiana, and against the peace and dignity of the same.

A TRUE BILL
/s/ Robert E. Hanna
Foreman of the Grand Jury.

John B. Jarrell
Assistant District Attorney, Fourth District of Louisiana.

Bond is hereby fixed at _____ Dollars, and the sheriff of the Parish of Ouachita is hereby authorized to accept same subject to his approval.

THUS DONE AND SIGNED in open Court on this the _____ day of July

A. D. 1978

Judge Fourth District Court.

MONROE, LA.

STATE OF LOUISIANA PARISH OF OUACHITA FOURTH DISTRICT COURT

STATE OF LOUISIANA

VERSUS NO. 38292

TIMOTHY GEORGE BALDWIN

FILED: July 22, 1978

Dorothy L Dunn

DEPUTY CLERK

VERDICTS

1. Guilty
2. Guilty of Second Degree Murder
3. Guilty of Manslaughter
4. Not Guilty

A TRUE COPY

Dy. CLERK OF COURT
OUACHITA PARISH, LA.

Verdict: Guilty

Date: July 29, 1978

Foreman: Mary Judy Puckett

STATE OF LOUISIANA * PARISH OF OUACHITA * FOURTH DISTRICT COURT

State of Louisiana

VS. NO. 38,292

Timothy George Baldwin

FILED: July 29, 1978

Dorothy L. Dunn
DEPUTY CLERK

JURY'S RECOMMENDATION AS TO SENTENCE:

Having found the below listed statutory aggravating circumstance or circumstances, and, after consideration of the mitigating circumstances offered, the jury recommends that the defendant be sentenced to death.

Aggravating circumstance or circumstances found:

(A) - The offender was engaged in the perpetration or attempted perpetration of armed robbery.

(C) - The offence was committed in an especially heinous, atrocious or cruel manner.

Mrs. Judy Puckett
Foreman

Date July 29, 1978

A TRUE COPY
Dorothy L. Dunn
DY. CLERK OF COURT
OUACHITA PARISH, LA.

APPENDIX E

LSA-Const. Art. 1, §2 (Due Process of Law)

No person shall be deprived of life, liberty, or property, except by due process of law.

LSA-Const. Art. 1, §16 (Right to a Fair Trial)

Every person charged with a crime is presumed innocent until proven guilty and is entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue is changed in accordance with law. No person shall be compelled to give evidence against himself. An accused is entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to testify in his own behalf.

LSA-Const. Art. 1, §20 (Right to Humane Treatment)

No law shall subject any person to euthanasia, to torture, or to cruel, excessive, or unusual punishment. Full rights of citizenship shall be restored upon termination of state and federal supervision following conviction for any offense.

LSA-R.S. 14:30 (As in effect at the time of the instant proceeding)

First degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm.

Whoever commits the crime of first degree murder shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence in accordance with the recommendation of the jury.

LSA-C.Cr.P. Art. 797 (Challenge for Cause)

The state or the defendant may challenge a juror for cause on the ground that:

(1) The juror lacks a qualification required by law;

(2) The juror is not impartial, whatever the cause of his partiality. An opinion or impression as to the guilt or innocence of the defendant shall not of itself be sufficient ground of challenge to a juror, if he declares, and the court is satisfied, that he can render an impartial verdict according to the law and the evidence;

(3) The relationship, whether by blood, marriage, employment, friendship, or enmity between the juror and the defendant, the person injured by the offense, the district attorney, or defense counsel, is such that it is reasonable to conclude that it would influence the juror in arriving at a verdict;

(4) The juror will not accept the law as given to him by the court;

(5) The juror served on the grand jury that found the indictment, or on a petit jury that once tried the defendant for the same or any other offense.

LSA-C.Cr.P.Art. 800(Objection to Ruling on Challenge for Cause)

A defendant cannot complain of a ruling refusing to sustain a challenge for cause made by him, unless his peremptory challenges shall have been exhausted before the completion of the panel.

The erroneous allowance to the state of a challenge for cause does not afford the defendant a ground for complaint, unless the effect of such ruling is the exercise by the state of more peremptory challenges than it is entitled to by law.

LSA-C.C.P. Art. 905.9 (Review on Appeal)

The Supreme Court of Louisiana shall review every sentence of death to determine if it is excessive. The court by rules shall establish such procedures as are necessary to satisfy constitutional criteria for review.

LSA-C.C.P. Art. 905.9.1 (Capital Sentence Review)

Section 1. Review Guidelines. Every sentence of death shall be reviewed by this court to determine if it is excessive. In determining whether the sentence is excessive the court shall determine:

(a) whether the sentence was imposed under the influence of passion, prejudice or any other arbitrary factors, and

(b) whether the evidence supports the jury's findings of a statutory aggravating circumstance, and

(c) whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

Section 2. Transcript Record. Whenever the death penalty is imposed a verbatim transcript of the sentencing hearing, along with the records required on appeal, if any, shall be transmitted to the court within the time and in the form, insofar as applicable, for transmitting the records for appeal.

Section 3. Uniform Capital Sentence Report; Sentence Investigation Report.

(a) Whenever the death penalty is imposed, the trial judge shall expeditiously complete and file in the record a Uniform Capital Sentence Report. The trial court may call upon the district attorney, defense counsel and the department of probation and parole of the Department of Corrections to provide any information needed to complete this report.

(b) The trial judge shall cause a sentence investigation to be conducted and the report to be attached to the uniform capital sentence report. The investigation shall inquire into the defendant's prior delinquent and criminal activity, family situation and background, education, economic and employment status, and any other relevant matters concerning the defendant. This report shall be sealed, except as provided below.

(c) Defense counsel and the district attorney shall be furnished a copy of the completed Capital Sentence Report and of the sentence investigation report, and shall be afforded seven days to file a written opposition to their factual contents. If the opposition shows sufficient grounds, the court shall conduct a contradictory hearing to resolve any substantial factual issues raised by the reports. In all cases, the opposition, if any, shall be attached to the reports.

(d) The preparation and lodging of the record for appeal shall not be delayed pending completion of the Uniform Capital Sentence Report.

Section 4. Sentence Review Memoranda; Form; Time for Filing.

(a) In addition to the briefs required on the appeal of the guilt-determination trial, the district attorney and the defendant shall file sentence review memoranda addressed to the propriety of the sentence. The form shall conform, insofar as applicable, to that required for briefs.

(b) The district attorney shall file the memorandum on behalf of the state within the time provided for the defendant to file his brief on the appeal. The memorandum shall include:

i. a list of each first degree murder case in the district in which sentence was imposed after January 1, 1976. The list shall include the docket number, caption, crime convicted, sentence actually imposed and a synopsis of the facts in the record concerning the crime and the defendant.

ii. a synopsis of the facts of the record concerning the crime and the defendant in the instant case.

iii. any other matters relating to the guidelines in Section 1.

(c) Defense counsel shall file a memorandum on behalf of the defendant within the time for the state to file its brief on the appeal. The memorandum shall address itself to the state's memorandum and any other matter relative to the guidelines in Section 1.

Section 5. Remand for Expansion of the Record. The court may remand the matter for the development of facts relating to whether the sentence is excessive.

Supreme Court, U.S.
FILED
DEC 16 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT

OF THE UNITED STATES

NO. 80-5751

TIMOTHY GEORGE BALDWIN

Versus

STATE OF LOUISIANA

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL
STATE OF LOUISIANA

J. CARL PARKERSON
DISTRICT ATTORNEY
FOURTH JUDICIAL DISTRICT

JOHN R. HARRISON
ASSISTANT DISTRICT ATTORNEY

BARBARA B. RUTLEDGE
ASSISTANT ATTORNEY GENERAL
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NEW ORLEANS, LA 70112
(504) 568-5545

APPENDIX

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IN THE

SUPREME COURT

OF THE UNITED STATES

NO. 80-5761

TIMOTHY GEORGE BALDWIN

Versus

STATE OF LOUISIANA

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioner, Timothy Baldwin, has applied to this Honorable Court for a writ of certiorari setting forth four issues for review. It is respectfully submitted that this application should be denied for the reasons set forth as follows.

ASSIGNMENT NO. 1

In an exhaustive argument appellant contends that the death penalty per se constitutes impermissibly, cruel and unusual punishment in violation of the United States and Louisiana Constitutions because "the death penalty does not deter murders, and accordingly makes no measurable contribution to acceptable goals of punishment."

This Honorable Court declared in Gregg vs. Georgia, 428 U.S. 153 (1976) the validity of the death penalty:

> Considerations of federalism, as well as respect for the ability of a legislature to evaluate, in terms of its particular State, the moral consensus concerning the death penalty and its social utility as a sanction, require us to conclude, in the absence of more convincing evidence, that the infliction of death as a punishment for murder is not without justification and thus is not unconstitutionally severe.,
>
> ...(W)e are concerned here only with the imposition of capital

> punishment for the crime of murder, and when a life has been taken deliberately by the offender, we cannot say that the punishment is invariably disproportionate to the crime. It is an extreme sanction, suitable to the most extreme crimes.
>
> We hold that the death penalty is not a form of punishment that may never be imposed, regardless of the circumstances of the offense, regardless of the character of the offender, and regardless of the procedure followed in reaching the decision to impose it.

It is respectfully urged that this court should follow this decision rejecting the argument that the death penalty is unconstitutional per se.

Petitioner now relies on extensive evidence that was never presented in the State District Court in support of the argument that retribution is no longer a valid basis for capital punishment as it does not comport with the dignity of man and does not serve as a deterent to murder. The State has had no opportunity to cross-examine the experts relied upon in support of the arguments presented herein. The disadvantage is reflected by a notation of some of the statements that are made herein that are obviously subject to attack.

The statement that the death penalty is not a deterrent is based in part on the study of Stephen J. Knorr who petitioner admits found it may be humanly impossible to prove one way or the other the deterrency question by statistical studies. We also see the argument that the only deterrency theory which has any basis in modern society is the probability of apprehension. The obvious thought is why is fear of apprehension a deterrent except for the consequences after apprehension. We further see reliance on Florida statistics that the murder rate increased in Florida in 1979 after the Spinkelink execution pointing out there were "857 murders in the State of Florida in 1977, 949 in 1978 and 1,084 in 1979." These statistics

fail to point out while there were 1,084 murders in 1979 there were 1,132 in 1975 or the significance, if any, of this.

The State will not attempt to analyze petitioner's evidence in support of its contention since as urged hereinabove this is not a matter to be properly considered by the reviewing court without having been presented as part of the trial court record in an adversary proceeding, and, it is urged if this court should conclude this evidence is pertinent it should at least be remanded for a hearing on this issue in the trial court. However, it is urged even with a consideration of the evidence as stated, there is no showing to warrant the conclusion that the death penalty is under all circumstances cruel and unusual punishment.

ASSIGNMENT NO. 2

In his second argument appellant contends under the Louisiana provisions for capital review defendant has been denied meaningful appellate review maintaining that there must be a statewide comparative review of death cases rather than the requirement of Rule 28 of the Louisiana Supreme Court that the review is limited only to first degree murder cases of the judicial district in which the offense being reviewed occurred. More particularly appellant points out that he was convicted in a district from which only two cases were compared and thereby has been denied the constitutional protection which accrue to defendants in larger districts. In conclusion his contention is that the appellate process itself must not be arbitrary and capricious.

The State of Louisiana respectfully submits that this assignment lacks merit as reflected by relevant case law on the subject.

The Supreme Court of the United States has upheld the death penalty in those situations where a state's death penalty statute is found to be neither arbitrary nor capricious. Gregg

v. Georgia, supra; Jurek v. Texas, 428 U.S. 262 (1976); Proffitt v. FLorida, 428 U.S. 242 (1976). Various safe-guards to insure a death sentence be neither arbitrary nor capricious have been recognized by the Supreme Court of the United States. Particularly in Gregg v. Georgia, supra, the court held as follows:

> The new Georgia sentencing procedures, by contrast, focus the jury's attention on the particularized nature of the crime and the particularized characteristics of the individual. While the jury is permitted to consider any aggravating or mitigating circumstances, it must find and identify at least one statutory aggravating factor before it may impose a penalty of death. In this way the jury's discretion is channeled. No longer can a jury wantonly and freakishly impose the death sentence; it is always circumscribed by the legislative guideline.

More pertinent to the issue herein the court in Gregg further observed that along with the safeguards legislated to guide the jury, "the review function of the Supreme Court of Georgia affords additional assurance...."

Similarly, the court held in Jurek v. Texas, supra, that the Texas death penalty statute did not violate the Eighth and Fourteenth Amendments finding that at the bifurcated hearing the jury would have adequate guidance to enable it to perform its sentencing function. The court herein further observed, "By providing prompt judicial review of the jury's decision in a court with statewide jurisdiction, Texas has provided a means to promote evenhanded, rational and consistent imposition of death sentences under law."

It is finally concluded in Jurek, "Because this system serves to assure that sentences of death will not be 'wantonly' or 'freakishly' imposed it does not violate the constitution."

It is obvious from the decisions of the United States Supreme Court the intent is to assure that the death sentence

will not be "wantonly or freakishly" imposed. It is likewise clear this may be accomplished by differing modes.

It must be noted that the appellate review in Louisiana is like that of Texas insofar as it is a court with statewide jurisdiction. While the State is required to set forth in memorandum a list a each first degree murder cases in the district with a synopsis of the facts in the district, it should be noted Rule 28 further requires that every death sentence be reviewed by this Court under the following guideline:

> (a) whether the sentence was imposed under the influence of passion, prejudice or any other arbitrary factors, and
> (b) whether the evidence supports the jury's finding of a statutory circumstance, and
> (c) whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and defendant.

It is difficult to conclude under this rule and being a court of statewide jurisdiction that this appellate review is arbitrary and capricious. While the court's attention is directed more closely to first degree murder cases of the district of the case under review this does not limit the review and by the mere fact of statewide jurisdiction the court must necessarily be aware of death penalty cases as a whole. State v. Morgan, 147 La. 205, 84 So.589 (1920) cert. denied, 253 U.S. 498.

However, even insofar as the limited review to first degree murder cases of the particular judicial district, it is urged that petitioner's argument does not establish that the Louisiana Supreme Court's review process is ineffective. Any suggestion that the Louisiana Supreme Court engages in only cursory or rubber-stamp review of death penalty cases is totally controverted by a study of the death penalty cases considered by this court and recognition of its reversals. See, State v. English, 367 So.2d 815 (La. 1979); State v. Collins,

370 So.2d 533 (La. 1979); State v. Sonnier, 380 So. 2d 1, (1979); and State v. Sonnier, 379 So.2d 1336 (1980). Of the fourteen cases that have reached the Louisiana Supreme Court in which a death penalty had been imposed by the jury eight have been reversed, seven of which the conviction was affirmed and only the sentence set aside.[1]

It is further urged that while the Louisiana Supreme Court's attention is directed to only the first degree murder cases of the particular district in which the case under review occurred, we see that the court is not enlightened on only those cases in the district in which death was imposed but to the outcome of all first degree murder cases, and, it may be urged as was contended by appellant's counsel in Proffitt that this is a more balanced view of the way the first degree murder cases are treated. As the court answered in Proffitt we contend that looking at all first degree murder cases in a particular district as compared to reviewing just death penalty convictions in the state "is not sufficient to raise a serious risk that the state capital-sentencing system will result in arbitrary and capricious imposition of the death penalty." Proffitt v. Florida, supra, at 259.

A study of the Louisiana court's action in its review of capital cases clearly supports this conclusion.

Moreover, while the opinion of the Louisiana Supreme Court refers to only two other first degree murder convictions in the district, it is pertinent to note the sentence review memorandum of the state filed in the Louisiana Supreme Court

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1/ Of the six affirmed two have applied for and had writs denied by the United States Supreme Court and presented the same issue as presented herein. See, Prejean vs. Louisiana, 79-6826, and Martin vs. Louisiana, 79-6341.

set forth the facts and results of eight cases involving first degree murder charges for that judicial district. There is no reason to believe each was not considered.

In conclusion, it is submitted that the Louisiana legislature has met and exceeded the safeguards required by the Supreme Court of the United States to insure the death penalty will not be applied in an arbitrary and capricious fashion. The review followed by the Louisiana Supreme Court pursuant to Rule 28 is beyond attack and the decisions of the Louisiana Supreme Court clearly reflect that it has exercised its review to insure that a unjust penalty will not be handed down in the state in a wanton or freakish manner. We find no merit in the attack that the appellate review is inadequate to insure the protection of a defendant's right.

ASSIGNMENT NO. 3

In this application for rehearing petitioner reurges his contention that the trial judge abused his discretion in failing to grant defense counsel's challenge for cause of prospective juror Vera Glass. It is contended now, as was urged below, that this prospective juror thought an indictment was an indication of guilt; that she tended to believe law enforcement officers over others; and she felt failure of a defendant to testify inferred guilt. Petitioner maintains although the court attempted to rehabilitate Mrs. Glass, she was not rehabilitated and the refusal to excuse her for cause resulted in a violation of defendant's rights and his conviction should be reversed.

It is respectfully submitted that the Louisiana Supreme Court did not err in holding, "There was no abuse of discretion in the refusal to allow the challenge for cause." This conclusion is fully supported by a study of the transcript.

Mrs. Glass indicated that she felt law enforcement officers must have some evidence of guilt to obtain an indict-

ment but when questioned if instructed that a charge cannot be used as evidence of guilt and if she could try that individual strictly on the evidence she heard and not what some person might have thought in the past, she responded, "Yes, I'm sure I could."

Additionally, she declared that the fact her son had been a deputy and that she knew other law enforcement officers would not make her biased and she maintained she could render a fair and impartial verdict.

Mrs. Glass did state that she would wonder why a defendant did not take the stand, but when examined further, she clearly was rehabilitated. She declared she understood that the State must prove that a person did it and that a person does not have to prove that he did not do it. Although the judge's instruction that she could not assume he was guilty simply because he did not choose to testify "when he has a right to so do" may have been a confusing statement on the right to remain silent, it is clear Mrs. Glass accepted the instruction of a presumption of innocence and a defendant's right to remain silent without inferring any guilt.

The Louisiana Supreme Court has recognized that service on a criminal jury by one associated with law enforcement duties must be closely scrutinized but such association does not automatically disqualify a prospective juror. Herein, while Mrs. Glass' statements appear to have provided sufficient grounds for a challenge for cause, it would also appear the later responses indicate her willingness and ability to decide the case impartially and according to the law and evidence. State v. Sonnier, 379 So.2d 1336 (La. 1980); State v. Nolan, 341 So.2d 885 (La. 1977); and State v. Calloway, 343 So.2d 694 (La. 1976).

The trial judge is vested with broad discretion in ruling on a challenge for cause and that ruling will not be

disturbed on appeal absent a showing of abuse of discretion. State v. Sonnier, supra, State v. Monroe, 366 So.2d 1345 (La. 1978); State v. Passman, 345 So.2d 874 (La. 1977). Moreover, a judge's refusal to excuse a prospective juror for cause is not an abuse of discretion, notwithstanding that the juror voiced a seemingly prejudicial opinion, whereupon further inquiry he has demonstrated a willingness and ability to decide the case impartially according to the law and evidence. State v. Passman, supra. A full review here shows the juror was rehabilitated and her opinion would give way to the instructions of the court.

Accordingly, it is submitted there is no merit to this allegation of error to justify granting a writ.

ASSIGNMENT NO. 4

Petitioner submits that Baldwin was illegally arrested because the officers lacked probable cause and the subsequent consents to search were tainted as an exploitation of the original illegal arrest.

This argument ignores the fact that a warrant for Baldwin's arrest had issued on April 8, 1978 that was based on a detailed affidavit executed by two of the investigating police officers and thereafter the Arkansas officers arrested Baldwin with knowledge of the outstanding warrant.

Consequently, this is not a situation in which it must be determined if the arresting officers had probable cause to execute the arrest since that is a question to be considered only on a warrantless arrest. As observed by the Louisiana Supreme Court, "There is no question that Baldwin was legally arrested pursuant to a valid warrant."

Petitioner admits that the evidence seized was obtained pursuant to written consents given by the defendant and the invalidity thereof is only maintained on the basis of being tainted by an illegal arrest.

As shown hereinabove defendant's arrest was based on a valid warrant so this argument of an invalid consent must fall.

Alternatively, if there was some taint in the arrest by confusion in the description of Baldwin's vehicle which lead to his location of the time of the execution of his arrest, the subsequent consents to search were sufficiently attenuated to be clearly valid under the test recognized in Brown v. Illinois, 422 U.S. 590 (1975). Clearly the consent was the product of free will and not an exploitation of an illegal arrest. The record shows in Arkansas defendant was informed of his Miranda rights, he was read the permission to search form and voluntarily and intelligently signed it. Again in Monroe, Louisiana, he was read a permission to search form and freely signed the consent to search.

It must be concluded this evidence was properly introduced in the trial of the case.

CONCLUSION

It is urged for the foregoing reasons the application for writs be denied.

Respectfully submitted,

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